

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Starline Tours of Hollywood, Inc.

Complainant

vs.

EHM Productions, Inc., dba TMZ, TMZ.Com,
TMZ Celebrity Tour

Defendant

Case No. 16-06-007
(Filed June 7, 2016)

**EHM PRODUCTIONS INC. AND MBLC PRODUCTIONS
INC.'S MOTION TO STRIKE PORTIONS OF THE
PREPARED DIRECT TESTIMONY OF KAMROUZ FARHADI**

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Dated: October 20, 2016

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Pursuant to Rule 11.1 of the Commission's Rules of Practice and Procedure, Defendants EHM Productions Inc. ("EHM") and MBLC Productions Inc. ("MBLC") (collectively, "Defendants" or "TMZ") hereby move to strike portions of the prepared direct testimony of Kamrouz Farhadi as lacking foundation, containing legal conclusions, or being outside the scope of the proceeding and therefore irrelevant. Defendants file this Motion at this time in order to conserve the parties' and the Commission's time and resources, and therefore respectfully request that the Presiding Officer grant this Motion before Defendants' deadline for submission of their own prepared testimony on November 8.¹

¹ See Rule. 9.1 of the Commission's Rules of Practice and Procedure.

I. BACKGROUND

As the Presiding Officer recognized in her September 19, 2016 email to the parties, and as Commissioner Randolph's September 2, 2016 Scoping Memo makes clear, the scope of the factual issues to be determined at the hearing is limited.² The Scoping Memo sets forth a narrow list of legal issues to be determined in this proceeding: (1) whether a complaint can be brought pursuant to Pub. Util. Code § 1702 against a charter-party carrier; (2) whether TMZ's activities in connection with its celebrity tour are such that TMZ is a passenger corporation or a charter-party carrier requiring Commission authority pursuant to either Pub. Util Code § 1031 or § 5371, respectively; (3) whether TMZ unlawfully held itself out to the public as operating with valid Commission authority, in violation of Pub. Util. Code § § 1034.5 or 5371.6; and (4) if TMZ's actions violated the Public Utilities Code, whether the Commission should sanction TMZ.

Few facts relevant to these issues are in dispute. The undisputed evidence will show, for example, that MBLC, the TMZ-affiliated entity that provides content for the TMZ Celebrity Tour (the "TMZ Tour"), does not hold any license or certificate from the Public Utilities Commission, but instead contracts with Exclusive Livery Service Inc., dba Exclusive Sedan Service ("ESS"), for ESS to operate the TMZ Tour. The undisputed evidence also will show that MBLC does not own buses, employ drivers or operate a maintenance yard. There will be no dispute that tickets for the TMZ Tour are available through a link on the TMZ.com website, which connects to a site operated by a third-

² Scoping Memo p. 4.

party ticket vendor, and at locations at the Grove shopping center and at the Hollywood & Highland complex in Hollywood, California, with both physical locations staffed by MBLC personnel. There will also be no dispute that, from May 12, 2016 through approximately June 29, 2016, ESS contracted with Pearl Limousine Service (“Pearl”) to operate the TMZ Tour, while ESS’s application Class “A” Charter Party Carrier Certificate was pending, or that Pearl’s Class “A” Charter Party Carrier Certificate was suspended by the Public Utilities Commission for approximately six days because Pearl had neglected to provide the PUC with proof of workers’ compensation insurance (although MBLC was not aware of the suspension until after the issue had been resolved). Nor will there be any dispute that ESS’s Class “A” Charter Party Carrier Certificate has been in good standing since it was approved on June 29, 2016.

II. PORTIONS OF THE TESTIMONY OF KAMROUZ FARHADI SHOULD BE STRICKEN

Starline offers the testimony of four witnesses: Serge Ermakov, Kamrouz Farhadi, Gwendolyn Slaughter and Mohammed K. Ghods. Given the narrow subset of relevant facts, the majority of the testimony offered by Starline’s witnesses is well outside the scope of the issues described in the Scoping Memo. Defendants are mindful, however, that the question of relevance is ultimately one for the Presiding Officer or the Commission. Defendants are fully prepared to object to, explain or rebut the testimony (much of which is inaccurate and, indeed, highly misleading) of these witnesses at the hearing.

Starline's CEO, Mr. Farhadi, however, testifies at length either to facts that are so far outside the scope of the proceeding, or are otherwise not proper subjects for testimony, that to admit such testimony will unnecessarily expand the scope, length, and cost of this proceeding. Mr. Farhadi testifies, for example, about irrelevant aspects of the Starline's former partnership with EHM to operate the TMZ Tour; the circumstances that led to the partnership's termination; and speculates about TMZ's motivation for terminating that partnership—issues which are patently irrelevant to this proceeding and/or about which Mr. Farhadi has no personal knowledge. Mr. Farhadi also purports to “testify” to legal conclusions regarding ultimate issues in this proceeding, most notably that, in his opinion, MBLC is unlawfully operating the TMZ Tour without Commission authority.

The Presiding Officer should therefore strike the following portions of Mr. Farhadi's testimony:

A. Assertions that TMZ “Wrongfully” Terminated its Contract with Starline

Mr. Farhadi's prepared testimony includes repeated statements that TMZ “wrongfully” terminated its contract with Starline, an impermissible legal conclusion. Mr. Farhadi claims, for example, states that “Starline operated the tour successfully until the contract was unilaterally and wrongfully terminated by TMZ so it could run the tour directly.” *See* Farhadi Test. at 3:13-15. Mr. Farhadi's speculation about the reasons underlying EHM's termination of its agreement with Starline is wholly irrelevant to this proceeding, and the question of whether that termination was “wrongful” is an

impermissible legal conclusion. These portions of Mr. Farhadi's testimony should therefore be stricken.³

B. Assertions Regarding Whether TMZ Operated the Tour Unlawfully, Illegally, or Without Necessary Authorization

Mr. Farhadi also purports to testify as to the legality of MBLC's current Tour operations. Mr. Farhadi testifies, for example, that "TMZ began to unlawfully operate its bus tour in or about April/May 2016 without first obtaining permission from this Commission," despite Starline's warning that to do so would be "illegal." *See* Farhadi Test. at 4:13-18. Mr. Farhadi further opines that MBLC's belief that it did not, itself, need CPUC authority for the TMZ Tour is "wrong," and ultimately concludes that "TMZ [EHM and MBLC] is not authorized to conduct charter-party carrier bus tour operations," that MBLC's "use of other licensed carriers' permits is a deceitful ruse to avoid regulation by this Commission" and that the Tour's operations are "illegal." *See* Farhadi Test. at 7:27-8:11. These statements, and others by Mr. Farhadi, go to ultimate issues to be decided in this proceeding, and are not the province of a fact witness. Mr. Farhadi's statements regarding TMZ's "unlawful," "illegal," or "unauthorized" operations or the Commission's authority over TMZ's operations, should therefore be stricken.

C. Conclusions Regarding the "Operator" of the TMZ Tour

To the extent Mr. Farhadi testifies that MBLC "operates" the TMZ Tour, *see, e.g.,* Farhadi Test. at 4:22-25, 5:3-4, 6:1-6, such testimony also should be stricken,

³ The challenged portions of Mr. Farhadi's testimony are set forth *verbatim* in the table attached hereto as Exhibit "A."

for at least two reasons. First, Mr. Farhadi does not know—and does not even purport to know—how the relationship between MBLC and ESS is structured. Mr. Farhadi does not, for example, know who owns the buses used for the Tour, who employs the drivers, and how (and by whom) the buses are maintained.⁴ These facts bear on the ultimate question of whether MBLC “operates” the Tour, which in turn informs the ultimate question of whether MBLC needs its own permit or certificate. Mr. Farhadi’s testimony not only lack foundation, it further usurps the role of the Commission to make these determinations itself. Mr. Farhadi’s testimony opinion regarding the Tour’s “operator” should therefore be stricken.

D. Assertions Regarding TMZ’s Motivations to “Hide” its Role in the TMZ Tour and to Harm Starline

Finally, Mr. Farhadi purports to testify—without foundation—as to MBLC’s motivations in partnering with Exclusive Livery Services, Inc. to operate the TMZ Tour. Mr. Farhadi implies, for example, that TMZ was somehow attempting to hide behind ESS’s license and in fact outright declares that “TMZ’s conduct in operating its bus tour has been deceitful from April/May 2016 to date.” *See* Farhadi Test. at 6:1-6. Mr. Farhadi further asserts that TMZ “manipulated the process to force cancellation of the tours that were booked by and through Starline” and “by virtue of its superior media position, manipulated the process to confuse the public” *See* Farhadi Test. at 8:15-9:14. Mr. Farhadi has no personal knowledge whatsoever as to Defendants’ motivations

⁴ Although Mr. Farhadi provides no basis for this testimony, Jason Beckerman, MBLC’s person most qualified, testified at his deposition that ESS—and not MBLC—owns the buses, maintains the buses, provides insurance for the buses, and otherwise performs services for the operation of the TMZ Tour. Mr. Beckerman’s complete deposition transcript is attached as Exhibit “A” to the prepared direct testimony of Mohammed K. Ghods.

in engaging ESS to operate the TMZ Tour. To the extent Mr. Farhadi purports to testify to such facts, his testimony should be stricken.

III. CONCLUSION

For all the foregoing reasons, Defendants respectfully request that the Presiding Officer grant this Motion and strike the portions of the prepared direct testimony of Kamrouz Farhadi set forth in Exhibit “A.”

Respectfully submitted October 20, 2016 at San Francisco, California.

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EXHIBIT A

Citation	Testimony	Objection
Page 3, lines 13 through 15 and lines 20 through 23	<p>“Starline operated the tour successfully until the contract was unilaterally and wrongfully terminated by TMZ so it could run the tour directly.”</p> <p>“On February 11, 2016, TMZ wrongfully terminated its relationship with Starline and expressly represented to Starline that it intended to independently operate a TMZ bus tour on its own.”</p>	Improper legal conclusion; lack of foundation.
Page 4, lines 13 through 26	<p>“TMZ began to unlawfully operate its bus tour in or about April/May 2016 without first obtaining permission from this Commission. This occurred despite the fact that Starline informed TMZ that Starline continued to be ready, willing and able to provide the tour through its system of transportation and that TMZ’s operation of a tour without a CPUC authority would be illegal. TMZ ignored the warning. I personally observed that TMZ set up a ticket selling location at the Hard Rock Café located at Hollywood & Highland, in the heart of Hollywood, where Starline’s ticket office was located. TMZ began running the tour from the same location as Starline. TMZ also contracted to obtain a ticket selling location at The Grove shopping center to sell tickets and operate its tours. TMZ has been continuously operating the bus tour from May 2016 to the date of this writing. As of this writing, I am informed no CPUC authority has been issued to TMZ.”</p>	Improper legal conclusion; lack of foundation.

Citation	Testimony	Objection
Page 5, lines 3 through 7 and lines 13 through 14	<p>“I understand that TMZ claims in this proceeding that it did not need to have any authority from CPUC to operate its tour. This position is wrong. TMZ is operating the TMZ bus tour, sells individual tickets to passengers and is only hiring vehicles from others to drive the ticketed passengers around.”</p> <p>“Obviously, it is illegal for any operator to operate with a suspended license. Here, neither TMZ nor the company it used as a ruse, was licensed.”</p>	Improper legal conclusion; lack of foundation.
Page 6, lines 1 through 3 and 5 through 6	<p>“TMZ’s conduct in operating its bus tour has been deceitful from April/May 2016 to date using licenses of other entities to make it appear that it is not the operator of the TMZ bus tour . . . TMZ is misleading the traveling public.”</p>	Improper legal conclusion; lack of foundation.
Page 7, lines 4 through 13	<p>“Starline’s contract was with EHM Productions, Inc. dba TMZ. In order to avoid the non-compete clause of that contract, EHM has claimed that it is using its affiliated entity, MBLC, Productions, Inc. to operate the TMZ tour. MBLC is also doing business as TMZ. The website through which tickets are sold is the TMZ.com website owned and operated by EHM. The transfer of the physical task of operation of the TMZ tour from EHM to MBLC is a legal maneuver to avoid liability to Starline. However, based on my observations, no disclosures have been made to the public and the presence of MBLC was only disclosed because of the proceedings before the Commission.”</p>	Improper legal conclusion; lack of foundation.

Citation	Testimony	Objection
Page 7, lines 27 through page 8, 11	<p>“Regardless of false pretenses for claiming to have MBLC operate the tour instead of EHM, based on my observations and experience, TMZ is the de facto operator of the TMZ bus tour and whatever entities are engaged in the operation of the TMZ tour, including MBLC and EHM, should obtain a proper license to avoid further violation of the law. Presently, TMZ [EHM and MBLC] is not authorized to conduct charter-party carrier bus tour operations without valid and proper authority from the Commission and the use of other licensed carriers’ permits is a deceitful ruse to avoid regulation by this Commission. These violations occurred after I and others informed the management of TMZ that licenses were needed. There is no excuse for the illegal operations that have occurred and I request the Commission take proper steps to stop further violations and impose appropriate sanctions accordingly.”</p>	Improper legal conclusion; lack of foundation.
Page 8, line 15, through page 9, line 14	<p>“Once TMZ announced in February 2016 that it would operate its own tour, it manipulated the process to force cancellation of the tours that were booked by and through Starline. TMZ claims that its affiliate MBLC began tour operations on May 12, 2016. Yet, for a significant period time before that, the TMZ.com website was manipulated to divert business away from Starline. Attached hereto as Exhibit C, is a print out from TMZ.com website from March 23, 2016, that blocked bookings with Starline and stated ‘There is a</p>	Improper legal conclusion; lack of foundation.

Citation	Testimony	Objection
	<p>brand new way ... and it's the only way ... to book the TMZ Celebrity Tour on line – and you're looking at it. For tours and charters beginning April 12, 2016, your EXCLUSIVE online ticketing source will be tmztour.com.' Because of TMZ's conduct, Starline began to receive cancellations and requests for refunds. TMZ sued Starline without cause in Federal Court to obtain a purported injunction, which it withdrew after Starline filed its opposition papers. However, it used the lawsuit as a means to pretend it was reporting courthouse news to defame Starline. TMZ, by virtue of its superior media position, manipulated the process to confuse the public by operating from the same location at Hollywood & Highland as Starline operates to make its operations look and feel the same as when the tour was operated by Starline. TMZ deliberately ignored the warnings about the need to obtain proper authority from this Commission. Starline's staff was forced to respond to confused passengers that showed up at Starline for the TMZ tour after Starline was cut off. The general public has no dealings with an actual licensed carrier but is only manipulated by TMZ's media prowess to buy tickets. TMZ's intentional conduct has confused the public and has also damaged a licensed carrier in the same market place in a direct and tangible way. Based, on the foregoing, imposition of appropriate sanctions for TMZ's deliberate conduct is highly warranted in this case."</p>	

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